

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP (PD) No.1182 of 2017
and CMP.No.5619 of 2017

Chandrammal

..Petitioner

Vs.

Masiammal (since deceased)

1.Vidya

2.Manimala

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.11.2016 made in I.A.No.235 of 2014 in O.S.No.14 of 2013 on the file of the District Munsif Court, Coonoor.

For Petitioner : Mr.R.Subramanian

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 04.11.2016 made in I.A.No.235 of 2014 in O.S.No.14 of 2013 on the file of the District Munsif Court, Coonoor, thereby dismissing the petition seeking amendment.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for permanent injunction in respect of the suit property. Pending suit, Status-Quo was ordered, since the petitioner is in possession and enjoyment of the suit property. Thereafter, the petitioner also filed a petition for appointment of Advocate Commissioner to find out the physical features of the suit property and if there is any building construction in the suit property. Unfortunately, the Advocate Commissioner filed a report and failed to mention about the construction of the building in the suit property. When the petitioner visited the suit property, his to shock and surprise, there was a building constructed by the second defendant. Therefore, the petitioner filed a petition to amend the prayer in the plaint by adding a prayer for mandatory injunction, directing the second respondent to demolish and dismantle the unauthorised construction in the suit property. In fact, he raised objection to the Advocate Commissioner's report, which is pending before the Court below. The Court below dismissed the petition only on the ground that the Advocate Commissioner was appointed to note down the physical features of the suit property and filed his report, but he has not stated in the report that there is existence of any building in the suit property. Therefore, the amendment shall not be entertained and dismissed the petition.

3. On a perusal of the Advocate Commissioner' report, the petitioner found that there is no construction in the suit property. When he visited the suit property, he found that there is a construction and as such, he also filed objection to the Advocate Commissioner's report. Therefore, it is just and necessary for the petitioner to amend the prayer for mandatory injunction directing the second respondent to demolish and dismantle the unauthorised construction put up in the suit property.

4. In view of the above, the order of the trial Court dated 04.11.2016 made in I.A.No.235 of 2014 in O.S.No.14 of 2013 on the file of the District Munsif Court, Coonoor, is set aside and the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

सत्यमेव जयते

31.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The District Munsif,
Coonoor.

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G.K.ILANTHIRAIYAN.J,

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